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February 27, 2020

VIA ECF
and EMAIL to (Failla_NYSDChambers@nysd.uscourts.gov)

Honorable Katherine Polk Failla
United States District Judge
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

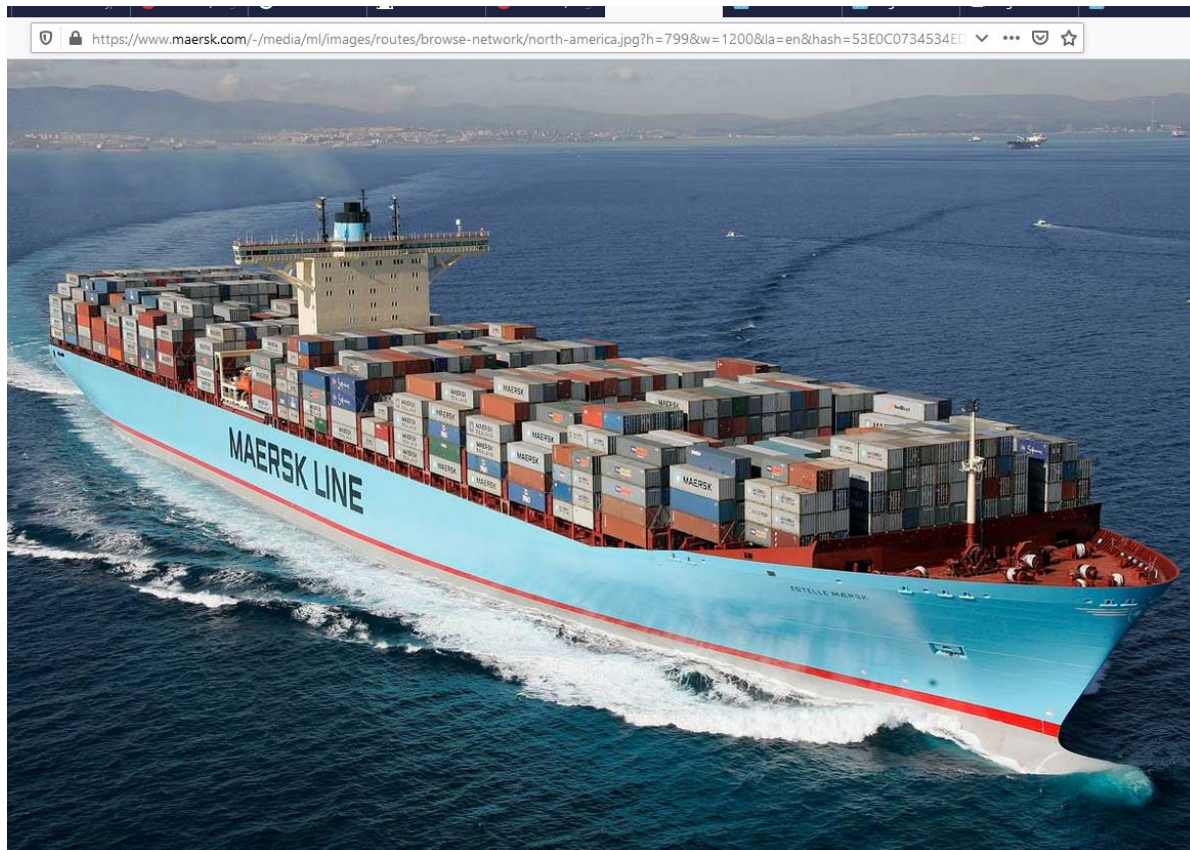
Re: ***Simon J. Burchett Photography, Inc. v. A.P. Moller Maersk A/S***, 1:2019-cv-01576
Correction of the Record

Your Honor:

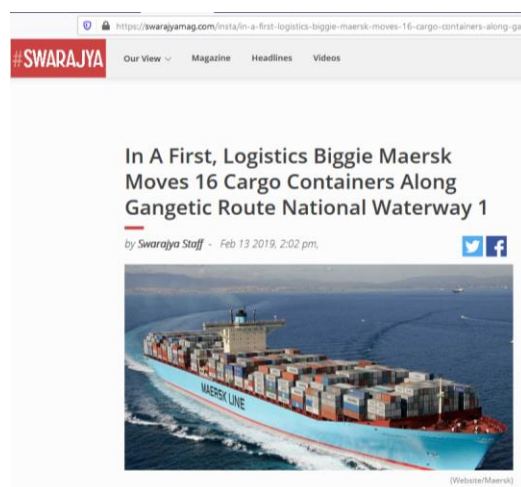
I represent the plaintiff in the above matter and write to correct the inaccuracies in defendant's correspondence dated February 25, 2022. (Dkt. No. 22). First, plaintiff resolved issues pertaining to "copyrighted images" of the Container Ship the Estelle Maersk through February 21, 2018 the "Effective Date" of the prior Settlement Agreement. The image titled "_L4A0294" at issue here was not copyrighted at the time of the Agreement. Further, the complained of uses by Maersk of _LA0294 occurred after the Execution Date of the Agreement and constitute new infringements.

Defendant has continued to exploit other copyrighted images, that were part of the Agreement. These images are still on defendant's website. (_L4A0297 is pictured below). See <https://www.maersk.com/-/media/ml/images/routes/browse-network/north-america.jpg?h=799&w=1200&la=en&hash=53E0C0734534ED286C2FD9B18B85D0525BF518E2;>

<https://www.maersk.com/-/media/ml/images/routes/browse-network/north-america.jpg>.



Defendant is also actively allowing third-parties to copy plaintiff's copyrighted images without a license. See, e.g., below:




There are additional examples in the prior request submitted by plaintiff of post Execution Date downloads from defendant. (Dkt. No 21). Defendant does not have a license for any use other than “Internal Use Only”, for certain copyrighted images. Defendant has never had a license to exploit the _L4A0294 image in any manner.

Finally, just looking at one current use, the <https://www.maersk.com/-/media/ml/images/routes/browse-network/north-america.jpg>, it is readily apparent this is part of the “North America” images. Plaintiff has the full right to serve defendant in North America. If the Court directs foreign service, plaintiff will immediately oblige. As for defendant’s notation that plaintiff has filed lawsuits in this Court – all but a few were necessitated by defendant’s act of posting plaintiff’s copyrighted images to Flickr (a creative commons website) without a license, and its continued licensing to third-parties.

In summation, the plaintiff never filed a notice of dismissal, it merely requested permission to file. Plaintiff can now prove that defendant has continued to exploit plaintiff’s copyrighted images, more than two years after the Settlement Agreement was executed.

If the Court would like a conference on this plaintiff can be reached at 212.300.5358, or can arrange to have the parties call the Court.

GARBARINI FITZGERALD P.C.

By: 
Richard M. Garbarini

cc: Defendant via ECF.